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SUBJECT: USUNESCO: MEETING WITH UK LAWYER ON CULTURAL DIVERSITY CONVENTION; CANADA TRIES TO HURRY THE PROCESS

11. (SBU) Summary. USTR and Department lawyers met Monday with British and Japanese lawyers at UNESCO to discuss the preliminary draft convention on cultural diversity. The UK indicated that they do not share our concerns and are prepared to bring the convention to a vote over US opposition. The Japanese indicated that they share our concerns about deep legal flaws in the convention but may be willing to let it go forward with band aid fixes. Meanwhile Canada is actively seeking support among executive board members for a draft resolution that will recommend that the general conference consider the convention a draft convention rather than a preliminary draft. End summary.

Meeting with UK Lawyer

12. (SBU) USTR associate general counsel Stanford McCoy and USMission Geneva lawyer Mike Peay met September 19 with Nicola Piccan a UK "cultural" lawyer. (She did not come with name cards.) UK Ambassador Tim Craddock led off by explaining that this meeting was motivated by the UK's concern over the bad impact that adoption of the convention could have on the US position in UNESCO. He noted in that regard rumors circulating in Paris that the US would pull out of UNESCO if the convention were adopted.

13. (SBU) The UK lawyer explained that they do not share US concerns about the convention. According to Piccan the convention gives states wide discretion to adopt certain cultural measures, but does not mandate any particular actions that would be inconsistent with WTO or other agreements. In this context, the UK takes comfort from Article 20 of the convention, governing the relationship to other instruments, paragraph 2 of which the UK views as expressly recognizing other agreements.

14. (SBU) In response to US concerns, the UK del noted that the definitions in the convention, though broadly expressed, could not usefully be narrowed. UK had decided that it could live with the definitions, particularly since they would be read in the context of other existing international agreements.

15. (SBU) Regarding paragraph 1 of Article 20, UK felt that it expressed a desire to seek interpretations of the various obligations that do not clash with other international agreements. UK del said the convention was not intended to, nor in its view did it conflict with trade agreements. US del asked why US proposals to clarify this were not accepted. The UK responded that they that article 20, para. 2 made this sufficiently clear.

16. (SBU) When asked about statements by French officials that France intends to use the convention to undermine WTO obligations, UK Ambassador Tim Craddock said that French motives are primarily limited to promoting French culture, especially within the Francophonie. He indicated that trade and Doha were not central to French considerations.

JAPAN

17. (SBU) In an earlier meeting with Yasushi Masaki, Director of the Economic and Social Treaties Division of the Foreign Ministry, Masaki stated that Japan had difficulties in accepting the convention in its current form. He emphasized the need for effective crisis management to reduce the harm done by the convention.

18. (SBU) Japan, like the United States, is concerned about a "basket" of issues with the convention. When asked to elaborate they identified Articles 6 and 20 (the Articles on which Japan made reservations) as the key problem areas on which Japan would concentrate its efforts. They expressed concern to a lesser degree about vague definitions. In response to questions from US del, they said they have many other issues with the convention that they would like to see addressed if the text were reopened, but for the time being they had decided to focus on their concerns regarding

Articles 6 and 20.

19. (SBU) Japan understands U.S. unhappiness with the current text and does not believe the United States will ratify the convention in its current form. Japan will support the U.S. "as much as possible" in seeking to continue the discussion. The dynamic in UNESCO has been to impose a draft text. Japan does not understand the rush, and thinks it is important to have a fair and complete discussion of their and our concerns about the text. In addition, the unwillingness of supporters of the convention to have a dialogue with the WTO over obvious trade issues caused Japan to question the supporters' motives.

110. (SBU) Japan also questioned whether there was true consensus on the current draft within the EC, and whether all EC members would actually ratify the convention. Japan speculated that the real intentions behind the convention were political.

"Pearls on a Pig"

111.)SBU) Japan raised two possible ways of diminishing the negative effect of the convention if, despite all our joint efforts, it moves to final adoption. The first was the possibility of a joint interpretive declaration by a number of countries stating that the convention is not intended to restrict trade but rather to promote cultural diversity within the UNESCO context. The second was a review process through which the convention's flaws could be revisited.

112. (SBU) US del jested that this brought to mind an old American adage about putting lipstick on a pig. Acknowledging that this approach was not ideal, Japan noted that the Japanese expression is "putting pearls on a pig."

113. (SBU) US del noted possible problems with Japan's suggested approach, such as the difficulty of obtaining wide enough agreement on a statement for it to have weight under customary international law of treaty interpretation. Nonetheless, US del said it would report back Japan's constructive thoughts on possible solutions.

114. ()SBU) This discussion suggested that Japan might be actively looking for a way out for itself and the Japanese DG through "solutions" that seek to minimize damage from the convention, but do not address its basic flaws. When US del urged Japan not to be "fatalistic," Japan agreed that it would be "better" to delay adoption, but this view was "heresy" and not likely to carry the day given the character of discussions in UNESCO.

Canada launches a preemptive strike

115. (SBU) Meanwhile, Canada has been circulating a draft resolution to executive board members that contains operant language that the executive board, "Recommends that the general conference at its 33rd session consider the said preliminary draft as a draft convention and adopt it as a UNESCO convention." We know that Ukraine, Tanzania and Senegal have already signed (as well as the 8 EU members on the board) and we expect that many other executive board members have also co-signed. (Note the board has

116. (SBU) Comment. The UK's concern about a possible US pull-out from UNESCO does not seem to extend to allowing the convention to be reopened to get it right. Continued pressure needs to be applied on London to get the UK to back away from its absolutist position. When the US left UNESCO in 1984 the British left shortly after to protest the "new world information order." The cultural diversity convention is the new world information order all over again.

117. (SBU) Comment continued. We are also concerned that Japan will not stick with the US and will seek to give the director general a face saving way out.

118. (SBU) Comment continued. The Canadian draft resolution may indicate a concern that the June convention draft does not meet the general conference rule that conventions must be finished seven months before the general conference. While a different draft was finished in March, it could be argued that the June version does not meet the deadline. Pressure will need to be applied in capitals of executive board members to get their delegation to either not co-sponsor or remove their sponsorship.

Oliver